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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/415,324 10/08/99 STRICKLAND D -5700-001

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EXAMINER

HALE, G

ART UNIT

PAPER NUMBER

3741

DATE MAILED:

07/27/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/415,324**

Applicant(s)  
**Strickland et al**

Examiner  
**Hale**

Group Art Unit  
**3741**



☒ Responsive to communication(s) filed on amendment of 5-5-2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-40 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-40 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3741

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Loper et al.

In regard to claims 1 and 8, Loper et al discloses a garment, usable in athletic and therefore considered an athletic garment which is only its intended use , including a pair of guard members 22,24 positioned to substantially cover the adjacent inner thighs as broadly claimed. (See Loper et al, figures 1 and col. 6, lines 5-20).

In regard to claim 8, Loper et al. discloses the guards in the pockets (18,20) as claimed.

2. Claims 22, 23, 25-28 and 30-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Dewhurst.

In regard to claims 21 and 22, Dewhurst discloses a garment (10, short, usable in athletics with thigh guard members 19,20 that are flush with the garment. (See Dewhurst, figures 2 and 3 and col. 3).

The guard members are pneumatic cushoins which are shock absorbent, deflective and are within pockets as claimed in claims 25-28 and 30-35.

Art Unit: 3741

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loper et al.

In regard to claims 2-4, Loper et al discloses the invention substantially as claimed. However,

Loper et al does not disclose the garment as being shorts or of elastic material. The Examiner takes Official notice that it is well known to construct garments as shorts and of elastic material as desired to achieve a desired level of comfort, support, freedom of movement and coolness.

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the garment of Loper et al to construct it in the shape of shorts and of elastic material to achieve a desired level of comfort and freedom of movement as desired.

5. Claims 5-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loper et al in view of Ross.

In regard to claims 5-7 and 10-20, Loper et al discloses the invention substantially as claimed.

However, Loper et al does not disclose the materials of the cushion members as specifically claimed. The Examiner takes Official Notice that it is well known to use foam, deflective and shock absorbing, flexible materials as cushioning material to achieve a desired level of protection and thickness. It is well known in athletic garments such as baseball, softball and other sports

Art Unit: 3741

shorts and pants to use such material. Ross also discloses the foam material used therein and also that the material is sewn in the garment and is non-removable so that the cushion does not slip or move while worn or is lost. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the Loper et al garment with a cushioning material such as that which is disclosed by Ross and well known in garment construction.

6. Claims 29 and 36-40 as rejected under 35 U.S.C. 103(a) as being unpatentable over Dewhurst in view of Ross.

In regard to claim 29 Dewhurst discloses the invention substantially as claimed. However, Dewhurst does not specifically disclose the pads as being non-removable nor the padding as being foam as claimed in claims 36-39 and as being shorts as claimed in claim 40.

The examiner takes Official Notice that it is well known in athletic garment construction to include foam padding to protect a wearer as that which is claimed and to make the padding non-removable as also disclosed by Ross in order to protect the wearer and also that the padding is not removed or dislodged from the garment when worn and also to provide the desired degree and type of cushioning desired to protect the wearer in different activities. It is also well known to construct the short of elastic material as claimed in claim 40 for added comfort and support to the wearer as discussed above such as in cycling and softball garments.

Art Unit: 3741

The claims are extremely broad. Athletic pants and shorts with inner thigh pads are well known and it would have been obvious to provide and type or degree of padding in the garment as desired to achieve the desired protection. It would have also been obvious to one having ordinary skill in the art to place pads in pockets in athletic garments in any desired location where protection is needed and to construct the garment of elastic material to provide the desired freedom of movement of the wearer.

*Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Application/Control Number: 09/<sup>415</sup>~~425~~,324

Page 6

Art Unit: 3741

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is (703) 308-1282.

  
Gloria Hale

Patent Examiner - Art Unit 3741

July 16, 2000